(2016) 04 SC CK 0132

In the Supreme Court Of India

Case No : Civil Appeal No. 4192 of 2008

Commissioner of Central Excise, Vapi — APPELLANT

Vs

Kolety Gum Industries — RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:
Constitution of India, 1950 — Article 133

Citation : (2016) 335 ELT 581

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Senior Advocate, Ms. Nisha Bagchi, Ms. Binu Tamta, T.M. Singh and Ms. Sujeeta Srivastava for B. Krishna Prasad, Advocates, for the Appellant; S/Shri V. Lakshmi Kumaran, Anandh K, Aditya Bhattacharya, Ms. L. Chamoye, Hemant Bajaj and M.P. Devanath, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. In this case the dispute is about the classification of goods known as "Guar Gum and Guar Dal Flour". As per the assessee, the goods should be covered by Chapter sub-heading 1301.10 whereas the Revenue seeks classification under Chapter Heading 1101.00. The Tribunal has decided the case in favour of the assessee herein [2005 (183) E.L.T. 440 (Tribunal)]. The Tribunal has also, in the instant case, held that the demand in any case was time-barred.

2. Learned senior counsel appearing for the Department has drawn our attention to the judgment of the Larger Bench of the Tribunal in the case of Krap Chem Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Daman, Rajkot reported in 2015 (325) E.L.T. 339 (Tri.-LB), wherein Larger Bench has taken the view which is in favour of the Revenue and the aforesaid goods are classified under Chapter sub-heading 1301.10. He also points out that the aforesaid judgment of the Larger Bench was not challenged by filing appeal by the assessee in the said case. We need not go into the aforesaid issue inasmuch as

the assessee would succeed on the ground of limitation itself because of the reason that the judgment of the Tribunal on the issue of limitation is perfectly justified inasmuch as at the relevant time there was conflicting judgment of the Tribunal and thus the action of the respondent in classifying the goods was clearly bona fide and larger period of limitation would not be available to the Department.

3. The civil appeal thus fails on the ground of limitation and is dismissed accordingly.

